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NO. 59457-5-I

IN THE COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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CITY OF TUKWILA,

Petitioner,

vs.

KELLAS WILLIAM GARRETT,

Respondent.

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COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
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BRIEF OF PETITIONER

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ORIGINAL

## TABLE OF CONTENTS

|      |   |   |
|------|---|---|
| I.   | ASSIGNMENTS OF ERROR .....  | 1 |
|      | A. <u>Assignments of Error</u> .....  | 1 |
|      | 1. The superior court erred in reversing Kellas Garrett's (hereafter "Garrett") conviction based upon the court's finding that the trial court's jury selection process was a material departure from the jury selection procedure required by law..... | 1 |
|      | 2. The superior court erred in finding that an agreement did not exist for jury selection between the City of Tukwila (hereafter the "City") and King County.....   | 1 |
|      | B. <u>Issues Pertaining to Assignments of Error</u> .....   | 1 |
|      | Assignment of Error No. 1 Whether the City's selection of jurors from three King County zip codes was a material departure from the jury selection process required by law. ....  | 1 |
|      | Assignment of Error No. 2 Whether an agreement existed between King County and the City to summon jurors. ....  | 1 |
| II.  | STATEMENT OF THE CASE.....  | 1 |
| III. | ARGUMENT .....  | 3 |
|      | A. <u>Standard of Review</u> .....  | 3 |
|      | B. <u>The Superior Court's Decision Conflicts With the Washington Supreme Court Decision in <i>State v. Twyman</i></u> .....  | 3 |
|      | C. <u>The City and King County had a Contract for the Selection of Jurors</u> .....   | 8 |
| IV.  | CONCLUSION.....   | 9 |

## TABLE OF AUTHORITIES

### TABLE OF CASES

|   |           |
|---|-----------|
| <i>State v. Finch</i> , 137 Wn. 2d 792, 975 P.2d 967 (1999) .....         | 3         |
| <i>State v. Finlayson</i> , 69 Wn. 2d 155, 417 P.2d 624 (1966) .....      | 6         |
| <i>State v. Nemitz</i> , 105 Wn. App. 205, 19 P.3d 480 (2001) .....       | 5         |
| <i>State v. Stenson</i> , 132 Wn. 2d 668, 940 P.2d 1239 (1997) .....      | 3         |
| <i>State v. Twyman</i> , 143 Wn. 2d 115, 17 P.3d 1184 (2001) .....        | 3,4,5,6,7 |
| <i>State v. Williamson</i> , 100 Wn. App. 248, 996 P.2d 1097 (2000) ..... | 3,5       |

### STATUTES

|                       |   |
|-----------------------|---|
| RCW 2.36.050 .....    | 4 |
| RCW 2.36.065 .....    | 5 |
| RCW 2.36.095(2) ..... | 8 |

### RULES AND REGULATIONS

|             |   |
|-------------|---|
| GR 29 ..... | 9 |
|-------------|---|

## I. ASSIGNMENTS OF ERROR

### A. Assignments of Error.

1. The superior court erred in reversing Kellas Garrett's (hereafter "Garrett") conviction based upon the court's finding that the trial court's jury selection process was a material departure from the jury selection procedure required by law.

2. The superior court erred in finding that an agreement did not exist for jury selection between the City of Tukwila (hereafter the "City") and King County.

### B. Issues Pertaining to Assignments of Error.

1. Whether the City's selection of jurors from three King County zip codes was a material departure from the jury selection process required by law. (Assignment of Error No. 1.)

2. Whether an agreement existed between King County and the City to summon jurors. (Assignment of Error No. 2.)

## II. STATEMENT OF THE CASE

On September 1, 2005, the City tried Garrett before a jury in Tukwila Municipal Court for the crime Violation of a Temporary Protection Order – Domestic Violence. CP 10. The trial court selected the jury pool from three King County zip codes (specifically 98168, 98178, and 98188) that roughly paralleled the City's boundaries,

excluding residents living in the City and including residents from outside the City limits. CP 97-98. This was the same process the City utilized every time it selected jurors through a contract the City has with King County to summon jurors from the King County jury pool. CP 98.

Before the jury was sworn, Garrett objected that the jury included jurors who did not live within the City limits. CP 11; 131. The trial court denied the objection. CP 11. Following a guilty verdict, Garrett moved to dismiss the case based upon his earlier objection to the jury pool. CP 11. The trial court again denied Garrett's motion, but invited legal briefing on the issue. CP 11; 41-83; 85-100; 102-106.

On January 19, 2006, the City and Garrett presented argument to the trial court regarding the validity of the trial court's denial of Garrett's objection to the jury pool and regarding the composition of the jury pool itself. CP 13-14; 267-283. On February 6, 2006, the trial court denied Garrett's Motions to Dismiss. CP 14-15; 297-301. The trial court then sentenced Garrett. CP 15; 307-308.

Garrett subsequently filed a Notice of Appeal with the King County Superior Court, alleging that the trial court erred in denying his Motions to Dismiss. CP 107-190; 191-312. On December 15, 2006, the superior court reversed Garrett's conviction. CP 313. The superior court held that there had been a material departure from the jury selection

procedure required by law as the City did not have the authority to summon jurors from outside of the City and its electoral district. CP 313. The superior court also found that an agreement did not exist between the City and King County to summon jurors. CP 313. In response, the City filed a Motion for Discretionary Review, which this Court accepted.

### III. ARGUMENT

#### A. Standard of Review.

This Court applies an abuse of discretion standard in its review of the superior court's reversal of Garrett's conviction. *State v. Williamson*, 100 Wn. App. 248, 253, 996 P.2d 1097 (2000). A court abuses its discretion where the court's exercise of its discretion is manifestly unreasonable or based upon untenable grounds or reasons. *State v. Finch*, 137 Wn.2d 792, 810, 975 P.2d 967 (1999) (citing *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997)). Here, the superior court abused its discretion in reversing Garrett's conviction based upon a finding that is in direct conflict with a Washington Supreme Court decision.

#### B. The Superior Court's Decision Conflicts With the Washington Supreme Court Decision in *State v. Twyman*.

The superior court's ruling that the City's process for selecting prospective jurors was a "material departure from the jury selection procedure required by law" and that the City had no authority to summon

jurors from outside the City and its electoral district is in direct conflict with the Washington Supreme Court's decision in *State v. Twyman*, 143 Wn.2d 115, 121, 17 P.3d 1184 (2001). Accordingly, the superior court's reversal of Garrett's conviction based upon this flawed reasoning was error that this Court should reverse.

The selection of jurors in courts of limited jurisdiction is governed by RCW 2.36.050. It states that:

In courts of limited jurisdiction, juries shall be selected and impaneled in the same manner as in the superior courts, except that a court of limited jurisdiction shall use the master jury list developed by the superior court to select a jury panel. Jurors for the jury panel may be selected at random from the population of the area served by the court.

RCW 2.36.050. The relevant section for this Court's analysis is what does "from the population of the area served by the court" mean. This Court need only look to the Washington Supreme Court decision in *State v. Twyman* to find the answer. In *Twyman*, the Supreme Court held that a jury selection process, identical to the one used in this case, was sufficient. *Twyman*, 143 Wn.2d at 126. Consequently, this Court should rely upon *Twyman* as its basis for affirming the legitimacy of the jury selection process in this case.

In *State v. Twyman*, the Petitioners argued that jurors should have been selected from all of King County, or, in the alternative, only from

within the *exact* electoral district of the Shoreline Division. *Id.* at 118. The Supreme Court disagreed. The petitioners alleged the trial court violated the statute governing jury selection by drawing jurors from three zip codes that only imprecisely paralleled the actual boundaries of the Shoreline District Court. The result of drawing jurors from three zip codes excluded prospective jurors who lived in the electoral district and included some from outside the electoral district. *Id.* The State noted that the trial court worked from a list randomly selected from the entire county, and then selected jurors from the zip codes closest to the division. *Id.* at 121.

The Supreme Court held that this procedure was a “fair approximation” of the division’s electoral district, i.e. the “population of the area served by the court.” *Id.* The Court cited RCW 2.36.065 for the premise that nothing in the jury selection statutes required a uniform jury selection method throughout the state. Rather, the issue was a fair and random selection of the master jury list and jury panel. *See* RCW 2.36.065. In *State v. Williamson*, 100 Wn. App. 248, 255, 996 P.2d 1097 (2000), the court stated that a defendant does not have the right to a particular juror or jury. *See also State v. Nemitz*, 105 Wn. App. 205, 19 P.3d 480 (2001). Rather, the question is whether an impartial jury gave him a fair trial. *Williamson*, 100 Wn. App. at 253.



The Supreme Court further explained that the jury selection statute is merely directory, and need only be substantially complied with. *Twyman*, 143 Wn.2d at 122. “The purposes of all these statutes are to provide a fair and impartial jury, and if that end has been attained and the litigant has had the benefit of such a jury, it ought not to be held that the whole proceeding must be annulled because of some slight irregularity.” *Id.*, citing, *State v. Finlayson*, 69 Wn.2d 155, 157, 417 P.2d 624 (1966). The *Twyman* Court emphasized that the Petitioners had made no showing that the jury pool, as selected, had any inherent bias or prejudice against them or that they were denied the right to challenge any juror for bias or peremptorily. *Twyman*, 143 Wn.2d at 122.

Finally, the *Twyman* Court stated that prejudice would only be presumed when there was a *material* departure from the jury selection statutes. *Id.* Ultimately, the Court held that there had been no gross departure from the statute, and as a result, the burden was on the petitioners to show prejudice, which they failed to do. *Id.*

Here, the City used the same procedure to summon jurors as used and ultimately found acceptable in *Twyman*. King County Superior Court, through a contract with the City, worked from a list randomly selected from the entire county and then selected jurors from three zip codes (98168, 98178, and 98188) provided by the City. CP 97-98. According to

the United States Postal Service, these three zip codes are designated for the City of Tukwila. CP 96, 98. These three zip codes cover residences in the City, as well as surrounding areas. According to the analysis set forth in *Twyman*, this procedure was a “fair approximation” of the City’s boundaries, i.e. the “population of the area served by the court.” *Twyman*, 143 Wn.2d at 121.

Pursuant to *Twyman*, the City substantially complied with the requirements set forth in the jury selection statute. Plain and simple, the trial court did not make a gross *material* departure from the jury selection statute. With no gross departure from the statute, the burden was on Garrett to show prejudice. Garrett has not and cannot show that the jury pool had any inherent bias against him or that the selection process utilized by the City prevented him from challenging any juror for bias or peremptorily. Indeed, there is not a single fact before this Court that Garrett did not receive a fair and impartial jury. Accordingly, the superior court abused its discretion in reversing Garrett’s conviction. The superior court’s decision squarely conflicts with the Supreme Court’s decision in *Twyman* and, therefore, this Court should reverse the superior court and affirm Garrett’s conviction.

C. The City and King County had a Contract for the Selection of Jurors.

RCW 2.36.095(2) authorizes agreements between superior courts and courts of limited jurisdiction for the provision of jury management activities. In October 2003, Tukwila Municipal Court and King County Superior Court entered into a Memorandum of Understanding (the "Agreement") relating to trial court coordination of jury services. CP 59-61. The Agreement set forth the parameters of a pilot project for coordinated jury processing. CP 59-61. Under the Agreement, King County Superior Court served as administrator of the pilot project and was responsible for duties relating to summoning jurors to Tukwila Municipal Court for the duration of the pilot period. CP 59-61. The term of the Agreement was from October 1, 2003, through April 30, 2005. CP 59-61.

Garrett alleged the Agreement between Tukwila Municipal Court and King County Superior Court expired on April 30, 2005, and had not been renewed on the date of his trial. CP 272-273. Because the Agreement had expired, Garrett claimed that the superior court did not have authority to summon jurors for Tukwila Municipal Court. CP 272-273. Garrett is mistaken. Tukwila Municipal Court did renew the Agreement and continued to receive jury selection services from King County Superior Court after April 30, 2005. CP 92-98.

Upon expiration of the Agreement, Tukwila Municipal Court verbally agreed to renew the Agreement. CP 98. Although there was no written Agreement in place, King County Superior Court continued to provide and charge Tukwila Municipal Court for trial court coordination of jury services. CP 98. In September 2005, Tukwila Municipal Court had an outstanding balance of \$922.50 with King County Superior Court for services to date. CP 94-95,98.

Finally, under General Rule ("GR") 29, the Presiding Judge of Tukwila Municipal Court is given the authority to recommend policies and procedures that improve the court's effectiveness. GR 29 also gives the Presiding Judge the authority to allocate resources in a way that maximizes the court's ability to resolve disputes fairly and expeditiously. GR 29 gave the Presiding Judge of Tukwila Municipal Court the authority to continue the Agreement with King County to maximize Tukwila Municipal Court's resources. To that end, the Agreement with King County was orally continued by the Presiding Judge of Tukwila Municipal Court and the Presiding Judge for King County Superior Court. CP 98.

#### IV. CONCLUSION

The City of Tukwila substantially complied with the requirements set forth in the jury selection statute. Garrett received a fair and impartial jury. Garrett has shown no prejudice. In addition, an Agreement was in place

between the City and King County to summon jurors. CP 313. This Court should reverse the superior court's ruling and affirm Garrett's conviction.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of September, 2007.

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